IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1195 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA AND ANOTHER
Versus
DAMODARDAS PITAMBARDAS

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Appearance :
MR RM VIN for the applicants.
None for the opponent.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 06/03/2006

ORAL JUDGMENT

The petitioners herein are the original defendants of Special Civil Suit No. 125 of 1990 which was filed by the respondent herein before the

Civil Judge, S.D., Bhavnagar with a prayer that the Railways may be directed to appoint an Arbitrator for deciding the dispute.

It seems that originally an application was preferred under section 20 of the Arbitration Act, 1940, which was numbered as Special Civil Suit No. 125 of 1990. In the said proceedings, an application at exh. 5 was filed for interim relief. Thereafter, on 21.12.1990, the plaintiff preferred another application, exh. 16, and the learned trial Judge passed an order not to restrain the plaintiff from withdrawing any amount of bill or bills or deposit not touching to the subject matter of the suit. Again, on 19.3.1991, the plaintiff preferred another application, exh. 17, for review of the order passed passed on 21.12.1990 below Exh.16. On 30.4.1993, the trial Court decided applications exh.5 and exh.17 by two separate orders, rejecting both application below exh.5 for interim relief and exh.17 for review of the order passed below exh.16. However while rejecting application below exh.17, the trial Court directed the defendants not to withhold the bills, deposits etc. of the plaintiff which are not touching to the suit contract and the subject matter of the suit. The original defendant has, therefore, preferred this Revision Application being aggrieved by the order passed below Exh.17.

Heard Mr. R.M. Vin for the applicants. The respondent, though served, has not remained present.

I am of the view that the impugned order passed by the trial Court below Exh.16 is not required to be interfered with by this Court in exercise of its limited jurisdiction under section 115 of the Code of Civil Procedure. As a matter of fact, the appropriate remedy available to the

petitioner is to file an Appeal from Order under Order 43, CPC, against the order impugned herein. Mr. Vin, however submitted that it appears that such appeal was preferred, but at present he is unable to remember as to what happened to the same. In any event, I am of the view that this Revision is not maintainable not only because it is filed against an interlocutory order but also the appropriate remedy would have been to file an appeal. When the impugned order is appealable, and when, as per the submission of learned advocate Mr. Vin, an appeal appears to have also been preferred, this Revision Application is not maintainable and cannot be entertained. I do not find any merits in this Revision Application against an order interlocutory in nature.

In the result, this Revision Application is rejected. Rule is discharged. No order as to costs.

If Special Civil Suit No. 125 of 1990 is yet not decided, Civil Judge, S.D., Bhavnagar shall decide the same as early as possible, and in any case, within six months from the date of receipt of the order of this Court.

Registry to send writ of this order forthwith.

[P. B. MAJMUDAR, J.]

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